

THOMAS E. FRANKOVICH (State Bar No. 074414)
 THOMAS E. FRANKOVICH,
A Professional Law Corporation
 4328 Redwood Hwy., Suite 300
 San Rafael, CA 94903
 Telephone: 415/674-8600
 Facsimile: 415/674-9900

Attorneys for Plaintiffs
 PATRICK CONNALLY
 and DISABILITY RIGHTS
 ENFORCEMENT, EDUCATION,
 SERVICES: HELPING YOU
 HELP OTHERS

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

PATRICK CONNALLY, an individual; and)
 DISABILITY RIGHTS, ENFORCEMENT,)
 EDUCATION, SERVICES:HELPING YOU)
 HELP OTHERS, a California public benefit)
 corporation,)

Plaintiffs,

v.

CAFE FRANCISCO; HAROLD PARKER)
 PROPERTIES LP, a California limited)
 partnership; JULIE D. RAY and ZIAD)
 ABUDIAB, individuals dba CAFE)
 FRANCISCO,)

Defendants.

CASE NO. CV-08-04857-WDB
Civil Rights

**COMPLAINT FOR INJUNCTIVE RELIEF
 AND DAMAGES:**

1st CAUSE OF ACTION: For Denial of Access
 by a Public Accommodation in Violation of the
 Americans with Disabilities Act of 1990 (42
 U.S.C. §12101, *et seq.*)

2nd CAUSE OF ACTION: For Denial of Full
 and Equal Access in Violation of California
 Civil Code §§54, 54.1 and 54.3

3rd CAUSE OF ACTION: For Denial of
 Accessible Sanitary Facilities in Violation of
 California Health & Safety Code §19955, *et seq.*

4th CAUSE OF ACTION: For Denial of
 Access to Full and Equal Accommodations,
 Advantages, Facilities, Privileges and/or
 Services in Violation of California Civil Code
 §51, *et seq.* (The Unruh Civil Rights Act)

DEMAND FOR JURY

1 Plaintiffs PATRICK CONNALLY, an individual; and DISABILITY RIGHTS,
2 ENFORCEMENT, EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California
3 public benefit corporation (hereinafter sometimes referred to as “DREES”), complain of
4 defendants HAROLD PARKER PROPERTIES LP, a California limited partnership; JULIE D.
5 RAY and ZIAD ABUDIAB, individuals dba CAFE FRANCISCO and allege as follows:

6 **INTRODUCTION:**

7 1. This is a civil rights action for discrimination against persons with physical
8 disabilities, of which class plaintiff PATRICK CONNALLY and the membership of DREES are
9 members, for failure to remove architectural barriers structural in nature at defendants’ CAFÉ
10 FRANCISCO, a place of public accommodation, thereby discriminatorily denying plaintiffs and
11 the class of other similarly situated persons with physical disabilities access to, the full and equal
12 enjoyment of, opportunity to participate in, and benefit from, the goods, facilities, services, and
13 accommodations thereof. Plaintiffs seek injunctive relief and damages pursuant to the
14 Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*; California Civil Code §§51,
15 51.5 and 54, *et seq.*; and California Health & Safety Code §19955, *et seq.*

16 2. Plaintiff PATRICK CONNALLY is a person with physical disabilities who, on or
17 about May 27, 2007, June 24, 2007, July 22, 2007, August 25, 2008, September 9, 2008 and
18 September 23, 2008, was an invitee, guest, patron, customer at defendants’ CAFÉ FRANCISCO,
19 in the City of San Francisco, California. At said time and place, defendants failed to provide
20 proper legal access to the cafe, which is a “public accommodation” and/or a “public facility”
21 including, but not limited to entrance, path of travel and restroom. The denial of access was in
22 violation of both federal and California legal requirements, and plaintiff PATRICK CONNALLY
23 suffered violation of his civil rights to full and equal access, and was embarrassed and
24 humiliated.

25 ///

26 ///

27 ///

28 ///

JURISDICTION AND VENUE:

3. **Jurisdiction:** This Court has jurisdiction of this action pursuant to 28 U.S.C. §1331 for violations of the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.* Pursuant to pendant jurisdiction, attendant and related causes of action, arising from the same nucleus of operative facts and arising out of the same transactions, are also brought under parallel California law, whose goals are closely tied with the ADA, including but not limited to violations of California Civil Code §51, *et seq.* and §54, *et seq.*, California Health & Safety Code §19955 *et seq.*, including §19959; Title 24 California Building Standards Code.

4. **Venue:** Venue is proper in this court pursuant to 28 U.S.C. §1391(b) and is founded on the facts that the real property which is the subject of this action is located at/near 2161 Powell Street, in the City and County of San Francisco, State of California, and that plaintiffs' causes of action arose in this county.

PARTIES:

5. Plaintiff PATRICK CONNALLY is a "physically handicapped person", a "physically disabled person", and a "person with physical disabilities" (hereinafter the terms "physically disabled", "physically handicapped" and "person with physical disabilities" are used interchangeably, as these words have similar or identical common usage and legal meaning, but the legislative scheme in Part 5.5 of the Health & Safety Code uses the term "physically handicapped persons" and the Unruh Civil Rights Act, §§51, 51.5, 54 and 54.1, and other statutory measures refer to protection of the rights of "physically disabled persons"). Plaintiff PATRICK CONNALLY is a "person with physical disabilities," as defined by all applicable California and United States laws. Plaintiff has severe traumatic head injury, chronic arthritis in upper extremities and constant joint inflammation, pain and swelling. Plaintiff PATRICK CONNALLY requires the use of a wheelchair to travel about in public. Consequently, plaintiff PATRICK CONNALLY is a member of that portion of the public whose rights are protected by the provisions of Health & Safety Code §19955, *et seq.* (entitled "Access to Public Accommodations by Physically Handicapped Persons") and the protections of the Unruh Civil

///

1 Rights Act, Civil Code §§51 and 51.5 the Disabled Persons Act, Civil Code §54, and the
2 Americans with Disabilities Act, 42 U.S.C. §12101, *et seq.*

3 6. Plaintiff DISABILITY RIGHTS, ENFORCEMENT, EDUCATION, SERVICES:
4 HELPING YOU HELP OTHERS (“DREES”) is a nonprofit (501(c)(3)) organization that works
5 with persons with disabilities to empower them to be independent in American society. DREES
6 accomplishes its goals and purposes through education on disability issues, enforcement of the
7 rights of persons with disabilities, and the provision of services to persons with disabilities, the
8 general public, public agencies and the private business sector. DREES brings this action on
9 behalf of its members, many of whom are persons with physical disabilities and whom have
10 standing in their right to bring this action.

11 7. That members of DREES, like plaintiff PATRICK CONNALLY, will or have
12 been guests and invitees at the subject CAFÉ FRANCISCO, and that the interests of plaintiff
13 DREES in removing architectural barriers at the subject café advance the purposes of DREES to
14 assure that all public accommodations, including the subject cafe, are accessible to independent
15 use by mobility-impaired persons. The relief sought by plaintiff DREES as alleged herein is
16 purely statutory in nature.

17 8. Defendants HAROLD PARKER PROPERTIES LP, a California limited
18 partnership; JULIE D. RAY and ZIAD ABUDIAB, individuals dba CAFE FRANCISCO
19 (hereinafter alternatively collectively referred to as “defendants”) are the owners and operators,
20 lessors and/or lessees, or agents of the owners, lessors and/or lessees, of the public
21 accommodation known as CAFÉ FRANCISCO, located at/near 2161 Powell Street, San
22 Francisco, California, or of the building and/or buildings which constitute said public
23 accommodation.

24 9. At all times relevant to this complaint, defendants HAROLD PARKER
25 PROPERTIES LP, a California limited partnership; JULIE D. RAY and ZIAD ABUDIAB,
26 individuals dba CAFE FRANCISCO, own and operate in joint venture the subject CAFÉ
27 FRANCISCO as a public accommodation. This business is open to the general public and
28 conducts business therein. The business is a “public accommodation” or “public facility” subject

1 to the requirements of California Civil Code §§51, 51.5 and 54, *et seq.*, Health and Safety code
2 §19955, *et seq.*, and the ADA, 42 U.S.C. §12101, *et seq.*

3 10. At all times relevant to this complaint, defendants HAROLD PARKER
4 PROPERTIES LP, a California limited partnership; JULIE D. RAY and ZIAD ABUDIAB,
5 individuals dba CAFE FRANCISCO are jointly and severally responsible to identify and remove
6 architectural barriers at the subject CAFÉ FRANCISCO pursuant to Code of Federal Regulations
7 title 28, section 36.201(b), which states in pertinent part:

8 **§ 36.201 General**

9 (b) *Landlord and tenant responsibilities.* Both the landlord
10 who owns the building that houses a place of public
11 accommodation and the tenant who owns or operates the place of
12 public accommodation are public accommodations subject to the
13 requirements of this part. As between the parties, allocation of
14 responsibility for complying with the obligations of this part may
15 be determined by lease or other contract.

16 28 CFR §36.201(b)

17 **PRELIMINARY FACTUAL ALLEGATIONS:**

18 11. The CAFÉ FRANCISCO, is a restaurant, located at/near 2161 Powell Street,
19 San Francisco, California. The CAFÉ FRANCISCO, its entrance, path of travel and restroom,
20 and its other facilities are each a “place of public accommodation or facility” subject to the
21 barrier removal requirements of the Americans with Disabilities Act. On information and belief,
22 each such facility has, since July 1, 1970, undergone “alterations, structural repairs and
23 additions”, each of which has subjected the CAFÉ FRANCISCO and each of its facilities, its
24 entrance, path of travel and restroom to disability access requirements per the Americans with
25 Disabilities Act Accessibility Guidelines (ADAAG), and Title 24 of the California Code of
26 regulations (Title 24).

27 12. At all times stated herein, plaintiff PATRICK CONNALLY was a member of
28 DREES.

13 13. At all times referred to herein and continuing to the present time, defendants, and
14 each of them, advertised, publicized and held out the CAFÉ FRANCISCO as being handicapped
15 accessible and handicapped usable.

1 14. On or about May 27, 2007, June 24, 2007, July 22, 2007, August 25, 2008,
2 September 9, 2008 and September 23, 2008, plaintiff PATRICK CONNALLY was an invitee
3 and guest at the subject CAFÉ FRANCISCO, for purposes of having food and/or beverages.

4 15. On or about May 27, 2007, plaintiff PATRICK CONNALLY was unable to enter
5 CAFÉ FRANCISCO independently due to a three - four (3 - 4) inch brick landing at the entrance
6 to the café. Said landing could easily be made accessible by its removal and replacement with a
7 ramp from the City sidewalk into the café.

8 16. On or about June 24, 2007, plaintiff PATRICK CONNALLY patronized CAFÉ
9 FRANCISCO. Plaintiff PATRICK CONNALLY encountered the same landing. Plaintiff
10 PATRICK CONNALLY decided to sit outside with his friend and have food and/or beverage.

11 17. On or about July 22, 2007, plaintiff PATRICK CONNALLY returned to the
12 CAFÉ FRANCISCO after his radio show for lunch. Plaintiff PATRICK CONNALLY was
13 accompanied by his service dog and Ben Kinney. Plaintiff PATRICK CONNALLY and Ben
14 Kinney ate outside. Later, Ben Kinney walked plaintiff's service dog, and plaintiff PATRICK
15 CONNALLY attempted to go inside the cafe. Plaintiff PATRICK CONNALLY could only enter
16 with the help of a patron who helped plaintiff PATRICK CONNALLY onto the landing.

17 18. Plaintiff PATRICK CONNALLY attempted to use the restroom but could not
18 access it because of a shelf which blocked the hallway door.

19 19. On or about July 24, 2007, plaintiff PATRICK CONNALLY wrote both the
20 landlord and the tenant about the access into CAFÉ FRANCISCO. Plaintiff PATRICK
21 CONNALLY never received a response.

22 20. On or about August 25, 2008, plaintiff PATRICK CONNALLY patronized CAFÉ
23 FRANCISCO with his friend Ben Kinney. The same barriers still existed more than a year later.
24 Plaintiff PATRICK CONNALLY once again could not participate in the inside service and was
25 relegated to have food and beverage outside.

26 ///

27 ///

28 ///

1 21. On or about September 9, 2008, plaintiff PATRICK CONNALLY returned to the
2 CAFÉ FRANCISCO. Plaintiff PATRICK CONNALLY could not independently enter the café.

3 22. On or about September 23, 2008, plaintiff PATRICK CONNALLY returned to
4 CAFÉ FRANCISCO. Plaintiff PATRICK CONNALLY received assistance to lift onto the brick
5 landing to gain entrance to the café. Plaintiff PATRICK CONNALLY had food and/or beverage.

6 23. At said time and place, plaintiff PATRICK CONNALLY needed to use an
7 accessible restroom. Plaintiff PATRICK CONNALLY wheeled toward the hallway that leads to
8 the unisex restroom. The hallway was partially blocked by cleaning mops/brooms. An employee
9 removed them. Plaintiff PATRICK CONNALLY wheeled into the restroom. Plaintiff
10 PATRICK CONNALLY encountered a restroom which had wrap-a-round grab bars but were too
11 short, amongst other non-complying elements.

12 24. Plaintiff PATRICK CONNALLY did not have any assistance in descending from
13 the brick landing as he left CAFÉ FRANCISCO. Plaintiff PATRICK CONNALLY rolled of the
14 landing and bounced to the sidewalk.

15 25. Therefore, at said time(s) and place, plaintiff PATRICK CONNALLY, a person
16 with a disability, encountered the following inaccessible elements of the subject CAFÉ
17 FRANCISCO which constituted architectural barriers and a denial of the proper and legally-
18 required access to a public accommodation to persons with physical disabilities including, but
19 not limited to:

- 20 a. lack of an accessible entrance due to a three - four (3 - 4) inch landing at
21 the entrance;
22 b. lack of a clear path of travel to the unisex restroom due to the storage of
23 mops/brooms and boxes in the hallway leading to the restroom;
24 c. lack of a fully accessible unisex public restroom; and
25 d. On personal knowledge, information and belief, other public facilities and
elements too numerous to list were improperly inaccessible for use by
persons with physical disabilities.

26 ///

27 ///

28 ///

1 26. At all times stated herein, the existence of architectural barriers at defendants'
2 place of public accommodation evidenced "actual notice" of defendants' intent not to comply
3 with the Americans with Disabilities Act of 1990 either then, now or in the future.

4 27. On or about July 24, 2007, defendant(s) were sent two (2) letters by or on behalf of
5 plaintiff PATRICK CONNALLY advising of the existence of architectural barriers, requesting a
6 response within 14 days and requesting remedial measures be undertaken within 90 days or an
7 explanation of why the time limit set could not be met and/or extenuating circumstances.
8 Defendants' never responded. Said letters are attached hereto collectively as exhibit "A" and
9 incorporated by reference as though fully set forth herein. Defendants' failure to respond
10 evidenced an intent not to seek or engage in an early and reasonable resolution of the matter.

11 28. At all times stated herein, defendants, and each of them, did not act as reasonable
12 and prudent landlord/tenant and were "negligent per se" or at a minimum negligent for not
13 removing architectural barriers that would foreseeably prevent plaintiff PATRICK CONNALLY
14 from receiving the same goods and services as able bodied people and some of which may and did
15 pose a threat of harm and/or personal injury to people with disabilities. Therefore as a legal result
16 of defendants breach of duty to remove those barriers encountered by plaintiff, plaintiff suffered
17 bodily injury.

18 29. As a legal result of defendants HAROLD PARKER PROPERTIES LP, a
19 California limited partnership; JULIE D. RAY and ZIAD ABUDIAB, individuals dba CAFE
20 FRANCISCO's failure to act as a reasonable and prudent public accommodation in identifying,
21 removing or creating architectural barriers, policies, practices and procedures that denied access to
22 plaintiffs and other persons with disabilities, plaintiffs suffered the damages as alleged herein.

23 30. As a further legal result of the actions and failure to act of defendants, and as a
24 legal result of the failure to provide proper handicapped-accessible public facilities as set forth
25 herein, plaintiffs were denied their civil rights to full and equal access to public facilities. Plaintiff
26 PATRICK CONNALLY suffered a loss of his civil rights and his rights as a person with physical
27 disabilities to full and equal access to public facilities, and further suffered bodily injury on or
28 about September 23, 2008, including, but not limited to, fatigue, stress, strain and pain in

1 wheeling and attempting to and/or transferring up, on, down, to, over, around and through
2 architectural barriers. Specifically, as a legal result of defendants negligence in the design,
3 construction and maintenance of the existing four (4) inch landing, plaintiff suffered continuous,
4 repetitive and cumulative trauma to his upper extremities and back when he bounced off the
5 landing in his wheelchair.

6 31. Further, plaintiff PATRICK CONNALLY suffered emotional distress, mental
7 distress, mental suffering, mental anguish, which includes, but is not limited to, shame,
8 humiliation, embarrassment, anger, disappointment and worry, expectedly and naturally
9 associated with a person with physical disabilities being denied access, all to his damages as
10 prayed hereinafter in an amount within the jurisdiction of this court. No claim is being made for
11 mental and emotional distress over and above that usually associated with the discrimination and
12 physical injuries claimed, and no expert testimony regarding this usual mental and emotional
13 distress will be presented at trial in support of the claim for damages.

14 32. Defendants', and each of their, failure to remove the architectural barriers
15 complained of herein created, at the time of plaintiff PATRICK CONNALLY's first visit to said
16 public accommodation, and continues to create continuous and repeated exposure to substantially
17 the same general harmful conditions which caused plaintiff PATRICK CONNALLY harm as
18 stated herein.

19 33. Plaintiff PATRICK CONNALLY and the membership of DREES were denied
20 their rights to equal access to a public facility by defendants HAROLD PARKER PROPERTIES
21 LP, a California limited partnership; JULIE D. RAY and ZIAD ABUDIAB, individuals dba
22 CAFE FRANCISCO, because defendants HAROLD PARKER PROPERTIES LP, a California
23 limited partnership; JULIE D. RAY and ZIAD ABUDIAB, individuals dba CAFE FRANCISCO
24 maintained a café without access for persons with physical disabilities to its facilities, including
25 but not limited to entrance, path of travel, restroom and other public areas as stated herein, and
26 continue to the date of filing this complaint to deny equal access to plaintiffs and other persons
27 with physical disabilities in these and other ways.

28 ///

1 34. On information and belief, construction alterations carried out by defendants have
2 also triggered access requirements under both California law and the Americans with Disabilities
3 Act of 1990.

4 35. Plaintiffs, as described hereinbelow, seek injunctive relief to require the CAFÉ
5 FRANCISCO to be made accessible to meet the requirements of both California law and the
6 Americans with Disabilities Act of 1990, whichever is more restrictive, so long as defendants
7 operate the café as a public facility.

8 36. Plaintiffs seek damages for violation of their civil rights on May 27, 2007, June 24,
9 2007, July 22, 2007, August 25, 2008, September 9, 2008 and September 23, 2008 and they seek
10 statutory damages of not less than \$4,000, pursuant to Civil Code §52(a) or alternatively \$1000
11 pursuant to Civil Code §54.3, for each day after his visit that the trier of fact (court/jury)
12 determines was the date that some or all remedial work should have been completed under the
13 standard that the landlord and tenant had an ongoing duty to identify and remove architectural
14 barriers where it was readily achievable to do so, which deterred plaintiff PATRICK
15 CONNALLY from returning to the subject public accommodation because of his knowledge
16 and/or belief that neither some or all architectural barriers had been removed and that said
17 premises remains inaccessible to persons with disabilities whether a wheelchair user or otherwise.

18 37. On information and belief, defendants have been negligent in their affirmative duty
19 to identify the architectural barriers complained of herein and negligent in the removal of some or
20 all of said barriers.

21 38. Because of defendants' violations, plaintiffs and other persons with physical
22 disabilities are unable to use public facilities such as those owned and operated by defendants on a
23 "full and equal" basis unless such facility is in compliance with the provisions of the Americans
24 with Disabilities Act of 1990, Civil Code §54.1 and Health & Safety Code §19955, *et seq.* and
25 other accessibility law as plead herein. Plaintiffs seek an order from this court compelling
26 defendants to make the café accessible to persons with disabilities.

27 ///

28 ///

39. On information and belief, defendants have intentionally undertaken to modify and alter existing building(s), and have failed to make them comply with accessibility requirements under the requirements of ADAAG and Title 24. The acts and omission of defendants, and each of them, in failing to provide the required accessible public facilities at the time of plaintiff's visit and injuries, indicate actual and implied malice toward plaintiffs, and despicable conduct carried out by defendants, and each of them, with a willful and conscious disregard for the rights and safety of plaintiffs and other similarly situated persons, and justify a trebling of damages as provided by Civil Code §§52(a) and 54.3, in order to make a more profound example of defendants, and each of them, to other operators of other cafes and other public facilities, and to punish defendants and to carry out the purposes of the Civil Code §§ 51, 51.5 and 54.

40. Plaintiffs are informed and believe and therefore allege that defendants HAROLD PARKER PROPERTIES LP, a California limited partnership; JULIE D. RAY and ZIAD ABUDIAB, individuals dba CAFE FRANCISCO, and each of them, caused the subject building(s) which constitute the CAFÉ FRANCISCO to be constructed, altered and maintained in such a manner that persons with physical disabilities were denied full and equal access to, within and throughout said building(s) of the café and were denied full and equal use of said public facilities. Furthermore, on information and belief, defendants have continued to maintain and operate said cafe and/or its building(s) in such conditions up to the present time, despite actual and constructive notice to such defendants that the configuration of subject café and/or its building(s) is in violation of the civil rights of persons with physical disabilities, such as plaintiff PATRICK CONNALLY, the membership of plaintiff DREES and the disability community which DREES serves. Such construction, modification, ownership, operation, maintenance and practices of such public facilities are in violation of Civil Code §§51, 51.5 and 54, Health and Safety Code §19955, and the ADA, 42 U.S.C. §12101, *et seq.*

41. On personal knowledge, information and belief, the basis of defendants' actual and constructive notice that the physical configuration of the facilities including, but not limited to, architectural barriers constituting the café and/or building(s) was in violation of the civil rights of persons with physical disabilities, such as plaintiffs, includes, but is not limited to,

1 communications with invitees and guests, plaintiff PATRICK CONNALLY himself, owners of
2 other restaurants, hotels, motels and businesses, notices they obtained from governmental
3 agencies upon modification, improvement, or substantial repair of the subject premises and other
4 properties owned by these defendants, newspaper articles and trade publications regarding the
5 Americans with Disabilities Act of 1990 and other access laws, public service announcements by
6 former U.S. Attorney General Janet Reno between 1993 and 2000, and other similar information.
7 Defendants' failure, under state and federal law, to make the CAFÉ FRANCISCO accessible is
8 further evidence of defendants' conscious disregard for the rights of plaintiff and other similarly
9 situated persons with disabilities. Despite being informed of such effect on plaintiff and other
10 persons with physical disabilities due to the lack of accessible facilities, defendants, and each of
11 them, knowingly and willfully refused to take any steps to rectify the situation and to provide full
12 and equal access for plaintiffs and other persons with physical disabilities to the CAFÉ
13 FRANCISCO. Said defendants, and each of them, have continued such practices, in conscious
14 disregard for the rights of plaintiffs and other persons with physical disabilities, up to the date of
15 filing of this complaint, and continuing thereon. Defendants had further actual knowledge of the
16 architectural barriers referred to herein by virtue of the demand letter addressed to the defendants
17 and served concurrently with the summons and complaint. Said conduct, with knowledge of the
18 effect it was and is having on plaintiffs and other persons with physical disabilities, constitutes
19 despicable conduct in conscious disregard of the rights and safety of plaintiffs and of other
20 similarly situated persons, justifying the imposition of treble damages per Civil Code §§52 and
21 54.3.

22 42. Plaintiff PATRICK CONNALLY and plaintiff DREES, on behalf of its
23 membership and the disability community which it serves, consisting of persons with disabilities,
24 would, could and will return to the subject public accommodation when it is made accessible to
25 persons with disabilities.

26 ///

27 ///

28 ///

1 **I. FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A PUBLIC**
 2 **ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH**
 3 **DISABILITIES ACT OF 1990 (42 U.S.C. §12101, *et seq.*)**
 4 (On behalf of Plaintiffs PATRICK CONNALLY and DISABILITY RIGHTS
 5 ENFORCEMENT, EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a
 6 California public benefit corporation and Against Defendants HAROLD PARKER
 7 PROPERTIES LP, a California limited partnership; JULIE D. RAY and ZIAD
 8 ABUDIAB, individuals dba CAFE FRANCISCO, inclusive)
 9 (42 U.S.C. §12101, *et seq.*)

10 43. Plaintiffs replead and incorporate by reference, as if fully set forth again herein, the
 11 allegations contained in paragraphs 1 through 42 of this complaint.

12 44. Pursuant to law, in 1990, the United States Congress made findings per 42 U.S.C.
 13 §12101 regarding persons with physical disabilities, finding that laws were needed to more fully
 14 protect:

15 some 43 million Americans with one or more physical or mental
 16 disabilities; [that] historically society has tended to isolate and
 17 segregate individuals with disabilities; [that] such forms of
 18 discrimination against individuals with disabilities continue to be a
 19 serious and pervasive social problem; [that] the nation's proper
 20 goals regarding individuals with disabilities are to assure equality of
 21 opportunity, full participation, independent living and economic
 22 self-sufficiency for such individuals; [and that] the continuing
 23 existence of unfair and unnecessary discrimination and prejudice
 24 denies people with disabilities the opportunity to compete on an
 25 equal basis and to pursue those opportunities for which our free
 26 society is justifiably famous.

27 45. Congress stated as its purpose in passing the Americans with Disabilities Act of
 28 1990 (42 U.S.C. §12102):

It is the purpose of this act (1) to provide a clear and comprehensive
 national mandate for the elimination of discrimination against
 individuals with disabilities; (2) to provide clear, strong, consistent,
 enforceable standards addressing discrimination against individuals
 with disabilities; (3) to ensure that the Federal government plays a
 central role in enforcing the standards established in this act on
 behalf of individuals with disabilities; and (4) to invoke the sweep
 of Congressional authority, including the power to enforce the 14th
 Amendment and to regulate commerce, in order to address the
 major areas of discrimination faced day to day by people with
 disabilities.

///

///

///

///

1 46. As part of the Americans with Disabilities Act of 1990, Public Law 101-336
2 (hereinafter the "ADA"), Congress passed "Title III - Public Accommodations and Services
3 Operated by Private Entities" (Section 301 42 U.S.C. §12181, *et seq.*). Among the public
4 accommodations identified for purposes of this title was:

5 (7) PUBLIC ACCOMMODATION - The following private
6 entities are considered public accommodations for purposes of this
7 title, if the operations of such entities affect commerce -

8 ---

9 (B) a restaurant, bar or other establishment serving food or drink.

10 42 U.S.C. §12181(7)(B)

11 47. Pursuant to §302, 42 U.S.C. §12182, "No individual shall be discriminated against
12 on the basis of disability in the full and equal enjoyment of the goods, services, facilities,
13 privileges, advantages, or accommodations of any place of public accommodation by any person
14 who owns, leases, or leases to, or operates a place of public accommodation."

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 48. The specific prohibitions against discrimination set forth in §302(b)(2)(a),
2 42 U.S.C. §12182(b)(2)(a) are:

3 (I) the imposition or application of eligibility criteria
4 that screen out or tend to screen out an individual with a disability
5 or any class of individuals with disabilities from fully and equally
6 enjoying any goods, services, facilities, privileges, advantages, or
accommodations, unless such criteria can be shown to be necessary
for the provision of the goods, services, facilities, privileges,
advantages, or accommodations being offered;

7 (ii) a failure to make reasonable modifications in
8 policies, practices, or procedures, when such modifications are
9 necessary to afford such goods, services, facilities, privileges,
10 advantages or accommodations to individuals with disabilities,
unless the entity can demonstrate that making such modifications
would fundamentally alter the nature of such goods, services,
facilities, privileges, advantages, or accommodations;

11 (iii) a failure to take such steps as may be necessary to
12 ensure that no individual with a disability is excluded, denied
13 services, segregated or otherwise treated differently than other
14 individuals because of the absence of auxiliary aids and services,
15 unless the entity can demonstrate that taking such steps would
fundamentally alter the nature of the good, service, facility,
privilege, advantage, or accommodation being offered or would
result in an undue burden;

16 (iv) a failure to remove architectural barriers, and
17 communication barriers that are structural in nature, in existing
facilities . . . where such removal is readily achievable; and

18 (v) where an entity can demonstrate that the removal of
19 a barrier under clause (iv) is not readily achievable, a failure to
20 make such goods, services, facilities, privileges, advantages or
accommodations available through alternative methods if such
methods are readily achievable.

21 The acts of defendants set forth herein were a violation of plaintiffs' rights under the ADA, Public
22 Law 101-336, and the regulations promulgated thereunder, 28 CFR Part 36, *et seq.* - Effective
23 January 31, 1993, the standards of the ADA were also incorporated into California Civil Code
24 §51, making available the damage remedies incorporated into Civil Code §51 and 52(a) and 54.3.

25 49. The removal of the barriers complained of by plaintiffs as hereinabove alleged was
26 at all times after January 26, 1992 "readily achievable" as to the subject building(s) of CAFÉ
27 FRANCISCO pursuant to 42 U.S.C. §12182 (b)(2)(A)(i)-(iv). On information and belief, if the
28 removal of all the barriers complained of herein together was not "readily achievable," the

1 removal of each individual barrier complained of herein was “readily achievable.” On
2 information and belief, defendants’ failure to remove said barriers was likewise due to
3 discriminatory practices, procedures and eligibility criteria, as defined by 42 U.S.C. §12182
4 (b)(2)(A)(i) and (ii).

5 50. Per 42 U.S.C. §12181 (9), the term “readily achievable” means “easily
6 accomplishable and able to be carried out without much difficulty or expense.” The statute
7 defines relative “expense” in part in relation to the total financial resources of the entities
8 involved. Plaintiffs allege that properly repairing, modifying, or altering each of the items that
9 plaintiffs complain of herein were and are “readily achievable” by the defendants under the
10 standards set forth under §301(9) of the Americans with Disabilities Act. Furthermore, if it was
11 not “readily achievable” for defendants to remove each of such barriers, defendants have failed to
12 make the required services available through alternative methods which were readily achievable.

13 51. On information and belief, construction work on, and modifications of, the subject
14 building(s) of the CAFÉ FRANCISCO occurred after the compliance date for the Americans with
15 Disabilities Act, January 26, 1992, independently triggering access requirements under Title III of
16 the ADA.

17 52. Pursuant to the Americans with Disabilities Act of 1990, 42 U.S.C. §12188, *et*
18 *seq.*, plaintiffs are entitled to the remedies and procedures set forth in §204(a) of the Civil Rights
19 Act of 1964, 42 U.S.C. 2000(a)-3(a), as plaintiffs are being subjected to discrimination on the
20 basis of disability in violation of this title or have reasonable grounds for believing that plaintiffs
21 are about to be subjected to discrimination in violation of §302. Plaintiffs are deterred from
22 returning to or making use of the public facilities complained of herein so long as the premises
23 and defendants’ policies bar full and equal use by persons with physical disabilities.

24 53. 42 U.S.C. 12188 (a)(1) states: “Nothing in this section shall require a person with a
25 disability to engage in a futile gesture if such person has actual notice that a person or
26 organization covered by this title does not intend to comply with its provisions.” Pursuant to this
27 section, plaintiff PATRICK CONNALLY has not returned to defendants’ premises since on or
28 about September 23, 2008, but on information and belief, alleges that defendants have continued

1 to violate the law and deny the rights of plaintiffs and of other persons with physical disabilities to
 2 access this public accommodation. Pursuant to 42 USC §12188(a)(2), "In cases of violations of
 3 §302(b)(2)(A)(iv) . . . injunctive relief shall include an order to alter facilities to make such
 4 facilities readily accessible to and usable by individuals with disabilities to the extent required by
 5 this title."

6 54. Plaintiffs seek relief pursuant to remedies set forth in §204(a) of the Civil Rights
 7 Act of 1964 (42 U.S.C. 2000(a)-3(a)), and pursuant to federal regulations adopted to implement
 8 the Americans with Disabilities Act of 1990, including but not limited to an order granting
 9 injunctive relief and attorneys' fees. Plaintiffs will seek attorneys' fees conditioned upon being
 10 deemed to be the prevailing party.

11 Wherefore, plaintiffs pray for relief and damages as hereinafter stated.

12 **II. SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS**
 13 **IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1 AND 54.3, ET SEQ.**
 14 (On Behalf of Plaintiffs PATRICK CONNALLY and DISABILITY RIGHTS,
 15 ENFORCEMENT, EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a
 16 California public benefit corporation, and Against Defendants HAROLD PARKER
 17 PROPERTIES LP, a California limited partnership; JULIE D. RAY and ZIAD
 18 ABUDIAB, individuals dba CAFE FRANCISCO, inclusive)
 19 (California Civil Code §§54, 54.1, 54.3, *et seq.*)

20 55. Plaintiffs replead and incorporate by reference as if fully set forth again herein, the
 21 allegations contained in paragraphs 1 through 54 of this complaint.

22 56. At all times relevant to this action, California Civil Code §54 has provided that
 23 persons with physical disabilities are not to be discriminated against because of physical handicap
 24 or disability. This section provides that:

25 (a) Individuals with disabilities . . . have the same rights as
 26 the general public to full and free use of the streets, highways,
 27 sidewalks, walkways, public buildings, medical facilities, including
 28 hospitals, clinics, and physicians' offices, and other public places.

///

///

///

///

///

1 57. California Civil Code §54.1 provides that persons with disabilities shall not be
2 denied full and equal access to places of public accommodation or facilities:

3 (a)(1) Individuals with disabilities shall be entitled to full
4 and equal access, as other members of the general public, to
5 accommodations, advantages, facilities, medical facilities, including
6 hospitals, clinics, and physicians' offices, and privileges of all
7 common carriers, airplanes, motor vehicles, railroad trains,
8 motorbuses, streetcars, boats, or any other public conveyances or
9 modes of transportation (whether private, public, franchised,
10 licensed, contracted, or otherwise provided), telephone facilities,
11 adoption agencies, private schools, hotels, lodging places, places of
12 public accommodation, amusement or resort, and other places to
13 which the general public is invited, subject only to the conditions
14 and limitations established by law, or state or federal regulation, and
15 applicable alike to all persons.

16 Civil Code §54.1(a)(1)

17 58. California Civil Code §54.1 further provides that a violation of the Americans with
18 Disabilities Act of 1990 constitutes a violation of section 54.1:

19 (d) A violation of the right of an individual under the
20 Americans with Disabilities Act of 1990 (Public Law 101-336) also
21 constitutes a violation of this section, and nothing in this section
22 shall be construed to limit the access of any person in violation of
23 that act.

24 Civil Code §54.1(d)

25 59. Plaintiff PATRICK CONNALLY and the membership of plaintiff DREES are
26 persons within the meaning of Civil Code §54.1 whose rights have been infringed upon and
27 violated by the defendants, and each of them, as prescribed by Civil Code §§54 and 54.1. Each
28 specific architectural barrier which defendants knowingly and willfully fail and refuse to remove
constitutes a separate act in violation of Civil Code §§54 and 54.1. Plaintiffs have been and
continue to be denied full and equal access to defendants' CAF FRANCISCO.
As a legal result, plaintiffs are entitled to seek damages pursuant to a court or jury determination,
in accordance with California Civil Code §54.3(a) for each day on which they visited or have been
deterred from visiting the café because of their knowledge and belief that the café is inaccessible
to persons with disabilities.

///

///

1 California Civil Code §54.3(a) provides:

2 Any person or persons, firm or corporation, who denies or interferes
3 with admittance to or enjoyment of the public facilities as specified
4 in Sections 54 and 54.1 or otherwise interferes with the rights of an
5 individual with a disability under Sections 54, 54.1 and 54.2 is
6 liable for each offense for the actual damages and any amount as
7 may be determined by a jury, or the court sitting without a jury, up
8 to a maximum of three times the amount of actual damages but in
9 no case less than . . . one thousand dollars (\$1,000) and . . .
10 attorney's fees as may be determined by the court in addition
11 thereto, suffered by any person denied any of the rights provided in
12 Sections 54, 54.1 and 54.2.

13 Civil Code §54.3(a)

14 60. On or about May 27, 2007, June 24, 2007, July 22, 2007, August 25, 2008,
15 September 9, 2008 and September 23, 2008, plaintiff PATRICK CONNALLY suffered violations
16 of Civil Code §§54 and 54.1 in that plaintiff PATRICK CONNALLY was denied access to
17 entrance, path of travel and restroom and other public facilities as stated herein at the CAFÉ
18 FRANCISCO and on the basis that plaintiff PATRICK CONNALLY was a person with physical
19 disabilities.

20 61. As a result of the denial of equal access to defendants' facilities due to the acts and
21 omissions of defendants, and each of them, in owning, operating and maintaining these subject
22 public facilities, plaintiffs suffered violations of plaintiffs' civil rights, including but not limited to
23 rights under Civil Code §§54, 54.1 and 54.3, and plaintiff PATRICK CONNALLY suffered
24 physical discomfort, bodily injury on or about September 23, 2008, including, but not limited to,
25 fatigue, stress, strain and pain in wheeling and attempting to and/or transferring up, on, down, to,
26 over, around and through architectural barriers. Specifically, as a legal result of defendants
27 negligence in the design, construction and maintenance of the existing brick landing, plaintiff
28 PATRICK CONNALLY suffered continuous, repetitive and cumulative trauma to his upper
extremities and back bouncing unto the sidewalk from the landing in his wheelchair.

62. Further, plaintiff PATRICK CONNALLY suffered mental distress, mental
suffering, mental anguish, which includes shame, humiliation, embarrassment, frustration, anger,
disappointment and worry, all of which are expectedly and naturally associated with a denial of
access to a person with physical disabilities, all to plaintiff's damages as hereinafter stated.

1 Defendants' actions and omissions to act constituted discrimination against plaintiff on the sole
2 basis that plaintiffs are persons or an entity that represents persons with physical disabilities and
3 unable, because of the architectural barriers created and maintained by the defendants in violation
4 of the subject laws, to use the public facilities hereinabove described on a full and equal basis as
5 other persons.

6 63. Plaintiffs have been damaged by defendants', and each of their, wrongful conduct
7 and seeks the relief that is afforded by Civil Code §§54 and 54.1, 54.3 for violation of plaintiffs'
8 rights as persons or an entity that represents persons with physical disabilities on or about
9 May 27, 2007, June 24, 2007, July 22, 2007, August 25, 2008, September 9, 2008 and
10 September 23, 2008, and on a continuing basis since then, including statutory damages, a trebling
11 of all of actual damages, general and special damages available pursuant to §54.3 of the Civil
12 Code according to proof.

13 64. As a result of defendants', and each of their, acts and omissions in this regard,
14 plaintiffs have been required to incur legal expenses and hire attorneys in order to enforce
15 plaintiffs' rights and enforce the provisions of the law protecting access for persons with physical
16 disabilities and prohibiting discrimination against persons with physical disabilities. Pursuant to
17 the provisions of Civil Code §54.3, plaintiffs therefore will seek recovery in this lawsuit for all
18 reasonable attorneys' fees and costs incurred if deemed the prevailing party. Additionally,
19 plaintiffs' lawsuit is intended not only to obtain compensation for damages to plaintiffs, but also
20 to compel the defendants to make their facilities accessible to all members of the public with
21 disabilities, justifying public interest attorneys' fees, if deemed the prevailing party, pursuant to
22 the provisions of §1021.5 of the Code of Civil Procedure.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

Wherefore, plaintiffs pray for relief and damages as hereinafter stated.

III. THIRD CAUSE OF ACTION FOR DENIAL OF ACCESSIBLE SANITARY FACILITIES IN VIOLATION OF HEALTH & SAFETY CODE §19955, *ET. SEQ.*
 (On Behalf of Plaintiffs PATRICK CONNALLY and DISABILITY RIGHTS, ENFORCEMENT, EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public benefit corporation and Against Defendants HAROLD PARKER PROPERTIES LP, a California limited partnership; JULIE D. RAY and ZIAD ABUDIAB, individuals dba CAFE FRANCISCO, inclusive)
 (Health & Safety Code §19955, *et seq.*)

65. Plaintiffs replead and incorporate by reference, as if fully set forth again herein, the allegations contained in paragraphs 1 through 64 of this complaint.

66. Health & Safety Code §19955 provides in pertinent part:

The purpose of this part is to insure that public accommodations or facilities constructed in this state with private funds adhere to the provisions of Chapter 7 (commencing with Sec. 4450) of Division 5 of Title 1 of the Government Code. For the purposes of this part “public accommodation or facilities” means a building, structure, facility, complex, or improved area which is used by the general public and shall include auditoriums, hospitals, theaters, restaurants, hotels, motels, stadiums, and convention centers. When sanitary facilities are made available for the public, clients or employees in such accommodations or facilities, they shall be made available for the handicapped.

67. Health & Safety Code §19956, which appears in the same chapter as §19955, provides in pertinent part, “accommodations constructed in this state shall conform to the provisions of Chapter 7 (commencing with Sec. 4450) of Division 5 of Title 1 of the Government Code” Health & Safety Code §19956 was operative July 1, 1970, and is applicable to all public accommodations constructed or altered after that date. On information and belief, portions of the CAFÉ FRANCISCO and/or of the building(s) were constructed and/or altered after July 1, 1970, and substantial portions of the café and/or the building(s) had alterations, structural repairs, and/or additions made to such public accommodations after July 1, 1970, thereby requiring said café and/or building to be subject to the requirements of Part 5.5, §19955, *et seq.*, of the Health & Safety Code upon such alteration, structural repairs or additions per Health & Safety Code §19959.

68. Pursuant to the authority delegated by Government Code §4450, *et seq.*, the State Architect promulgated regulations for the enforcement of these provisions. Effective July 1,

1 1982, Title 24 of the California Building Standards Code adopted the California State Architect's
2 Regulations and these regulations must be complied with as to any alterations and/or
3 modifications of CAFÉ FRANCISCO and/or the building(s) occurring after that date.
4 Construction changes occurring prior to this date but after July 1, 1970 triggered access
5 requirements pursuant to the "ASA" requirements, the American Standards Association
6 Specifications, A117.1-1961. On information and belief, at the time of the construction and
7 modification of said building, all buildings and facilities covered were required to conform to
8 each of the standards and specifications described in the American Standards Association
9 Specifications and/or those contained in Title 24 of the California Building Standards Code.

10 69. Restaurants such as the CAFÉ FRANCISCO are "public accommodations or
11 facilities" within the meaning of Health & Safety Code §19955, *et seq.*

12 70. As a result of the actions and failure to act of defendants, and as a result of the
13 failure to provide proper and legally handicapped-accessible public facilities, plaintiffs were
14 denied plaintiffs' rights to full and equal access to public facilities and suffered a loss of plaintiffs'
15 civil rights and plaintiffs' rights as persons with physical disabilities to full and equal access to
16 public facilities.

17 71. Attorneys' Fees -- As a result of defendants' acts and omissions in this regard,
18 plaintiffs have been required to incur legal expenses and hire attorneys in order to enforce
19 plaintiffs' civil rights and enforce provisions of the law protecting access for the persons with
20 physical disabilities and prohibiting discrimination against the persons with physical disabilities,
21 and to take such action both in plaintiffs' own interests and in order to enforce an important right
22 affecting the public interest. Plaintiffs, therefore, seek in this lawsuit the recovery of all
23 reasonable attorneys' fees incurred, pursuant to the provisions of the Code of Civil Procedure
24 §1021.5. Plaintiffs additionally seek attorneys' fees pursuant to Health & Safety Code §19953
25 and Civil Code §§54.3 and/or in the alternative, plaintiffs will seek attorneys' fees, costs and
26 litigation expenses pursuant to §204(a) of the Civil Rights Act of 1964 (42 U.S.C. 200(a)-3(a)).
27 Plaintiffs will seek attorneys' fees conditioned upon being deemed to be the prevailing party.

28 ///

1 72. Plaintiffs seek injunctive relief for an order compelling defendants, and each of
 2 them, to make the subject place of public accommodation readily accessible to and usable by
 3 persons with disabilities.

4 Wherefore, plaintiffs pray for damages and relief as hereinafter stated.

5 **IV. FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO FULL AND**
 6 **EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES, PRIVILEGES**
 7 **AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL CODE §51, *ET***
 8 ***SEQ.* (THE UNRUH CIVIL RIGHTS ACT)**

9 (On Behalf of Plaintiffs PATRICK CONNALLY and DISABILITY RIGHTS,
 10 ENFORCEMENT, EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a
 11 California public benefit corporation, and Against Defendants HAROLD PARKER
 12 PROPERTIES LP, a California limited partnership; JULIE D. RAY and ZIAD
 13 ABUDIAB, individuals dba CAFE FRANCISCO, inclusive)
 14 (Civil Code §51, 51.5)

15 73. Plaintiffs replead and incorporate by reference, as if fully set forth again herein, the
 16 allegations contained in paragraphs 1 through 72 of this complaint.

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

74. Defendants' actions and omissions and failure to act as a reasonable and prudent public accommodation in identifying, removing and/or creating architectural barriers, policies, practices and/or procedures violates §51 of the Civil Code, the Unruh Civil Rights Act. The Unruh Act provides:

This section shall be known, and may be cited, as the Unruh Civil Rights Act.

All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, or **disability** are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

This section shall not be construed to confer any right or privilege on a person that is conditioned or limited by law or that is applicable alike to persons of every sex, color, race, religion, ancestry, national origin, or **disability**.

Nothing in this section shall be construed to require any construction, alteration, repair, structural or otherwise, or modification of any sort whatsoever, beyond that construction, alteration, repair, or modification that is otherwise required by other provisions of law, to any new or existing establishment, facility, building, improvement, or any other structure . . . nor shall anything in this section be construed to augment, restrict, or alter in any way the authority of the State Architect to require construction, alteration, repair, or modifications that the State Architect otherwise possesses pursuant to other . . . laws.

A violation of the right of any individual under the Americans with Disabilities Act of 1990 (Public Law 101-336) shall also constitute a violation of this section.

As the Unruh Act incorporates violations of the Americans with Disabilities Act of 1990, the "intent" of the defendants in not complying with barrier removal is not an issue. Hence, the failure on the parts of defendants, as reasonable and prudent public accommodations, in acting or failing to act to identify and remove barriers can be construed as a "negligent per se" act of defendants, and each of them.

///

///

///

///

1 75. The acts and omissions of defendants stated herein are discriminatory in nature and
2 in violation of Civil Code §51.5:

3 No business establishment of any kind whatsoever shall
4 discriminate against, boycott or blacklist, refuse to buy from, sell to,
5 or trade with any person in this state because of the race, creed,
6 religion, color, national origin, sex, or **disability** of the person or of
the person's partners, members, stockholders, directors, officers,
managers, superintendents, agents, employees, business associates,
suppliers, or customers.

7 As used in this section, "person" includes any person, firm
8 association, organization, partnership, business trust, corporation,
limited liability company, or company.

9 Nothing in this section shall be construed to require any
10 construction, alteration, repair, structural or otherwise, or
11 modification of any sort whatsoever, beyond that construction,
12 alteration, repair or modification that is otherwise required by other
13 provisions of law, to any new or existing establishment, facility,
14 building, improvement, or any other structure . . . nor shall anything
in this section be construed to augment, restrict or alter in any way
the authority of the State Architect to require construction,
alteration, repair, or modifications that the State Architect otherwise
possesses pursuant to other laws.

14 ---

15 76. Defendants' acts and omissions as specified have denied to plaintiffs full and equal
16 accommodations, advantages, facilities, privileges and services in a business establishment, on the
17 basis of physical disability, in violation of Civil Code §§51 and 51.5, the Unruh Civil Rights Act.
18 Furthermore, pursuant to the 1992 amendment to California Civil Code §51, "A violation of the
19 right of any individual under the Americans with Disabilities Act of 1990 (Public Law 101-336)
20 shall also constitute a violation of this section." Plaintiffs accordingly incorporate the entirety of
21 their above cause of action for violation of the Americans with Disabilities Act at §43, *et seq.*, as
22 if replied herein.

23 77. As a legal result of the violation of plaintiff PATRICK CONNALLY's civil rights
24 as hereinabove described, plaintiff PATRICK CONNALLY has suffered general damages, bodily
25 injury on or about September 23, 2008, including, but not limited to, fatigue, stress, strain and
26 pain in wheeling and attempting to and/or transferring up, on, down, to, over, around and through
27 architectural barriers. Specifically, as a legal result of defendants negligence in the design,
28 construction and maintenance of the existing brick entry landing, plaintiff suffered continuous,

1 repetitive and cumulative trauma to his upper extremities and back bouncing onto the sidewalk in
2 his wheelchair from the raised landing.

3 78. Further, plaintiff PATRICK CONNALLY suffered physical injury, emotional
4 distress (all to plaintiff's damage according to proof, and incurred reasonable attorneys' fees and
5 costs). Plaintiffs PATRICK CONNALLY and DREES are entitled to the rights and remedies of
6 §52(a) of the Civil Code, including trebling of actual damages (defined by §52(h) of the Civil
7 Code to mean "special and general damages"), as well as to reasonable attorneys' fees and costs,
8 as is allowed by statute, according to proof if deemed to be the prevailing party.

9 **PRAYER:**

10 Plaintiffs pray that this court award damages and provide relief as follows:

11 **I. PRAYER FOR FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A
12 PUBLIC ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH
13 DISABILITIES ACT OF 1990 (42 U.S.C. §12101, *et seq.*)**

14 (On Behalf of Plaintiffs PATRICK CONNALLY and DISABILITY RIGHTS
15 ENFORCEMENT, EDUCATION, SERVICES:HELPING YOU HELP OTHERS, a
16 California public benefit corporation, and Against Defendants HAROLD PARKER
17 PROPERTIES LP, a California limited partnership; JULIE D. RAY and ZIAD
18 ABUDIAB, individuals dba CAFE FRANCISCO, inclusive)
19 (42 U.S.C. §12101, *et seq.*)

20 1. For injunctive relief, compelling defendants HAROLD PARKER PROPERTIES
21 LP, a California limited partnership; JULIE D. RAY and ZIAD ABUDIAB, individuals dba
22 CAFE FRANCISCO, inclusive, to make the CAFÉ FRANCISCO, located at 2161 Powell Street,
23 San Francisco, California, readily accessible to and usable by individuals with disabilities, per 42
24 U.S.C §12181, *et seq.*, and to make reasonable modifications in policies, practice, eligibility
25 criteria and procedures so as to afford full access to the goods, services, facilities, privileges,
26 advantages and accommodations being offered.

27 2. For attorneys' fees, litigation expenses and costs of suit, if plaintiffs are deemed
28 the prevailing party; and

3. For such other and further relief as the court may deem proper.

///

///

///

II. PRAYER FOR SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1 AND 54.3, ET SEQ.

(On Behalf of Plaintiffs PATRICK CONNALLY and DISABILITY RIGHTS ENFORCEMENT, EDUCATION, SERVICES:HELPING YOU HELP OTHERS, a California public benefit corporation, and Against Defendants HAROLD PARKER PROPERTIES LP, a California limited partnership; JULIE D. RAY and ZIAD ABUDIAB, individuals dba CAFE FRANCISCO, inclusive)
(California Civil Code §§54, 54.1, 54.3, *et seq.*)

1. For injunctive relief, compelling defendants HAROLD PARKER PROPERTIES LP, a California limited partnership; JULIE D. RAY and ZIAD ABUDIAB, individuals dba CAFE FRANCISCO, inclusive, to make the CAFÉ FRANCISCO, located at 2161 Powell Street, San Francisco, California, California, readily accessible to and usable by individuals with disabilities, per state law.

2. Statutory damages as afforded by Civil Code §54.3 for the date of incident and for each occasion on which plaintiffs were deterred from returning to the subject public accommodation.

3. Attorneys' fees pursuant to Civil Code §54.3 and Code of Civil Procedure §1021.5, if plaintiffs are deemed the prevailing party;

4. Treble damages pursuant to Civil Code §54.3;

5. For all costs of suit;

6. Prejudgment interest pursuant to Civil Code §3291; and

7. Such other and further relief as the court may deem just and proper.

III. PRAYER FOR SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1 AND 54.3, ET SEQ.

(On Behalf of Plaintiff PATRICK CONNALLY, and Against Defendants HAROLD PARKER PROPERTIES LP, a California limited partnership; JULIE D. RAY and ZIAD ABUDIAB, individuals dba CAFE FRANCISCO, inclusive),
(California Civil Code §§54, 54.1, 54.3, *et seq.*)

1. General and compensatory damages according to proof.

///

///

///

///

**IV. PRAYER FOR THIRD CAUSE OF ACTION FOR DENIAL OF ACCESSIBLE
SANITARY FACILITIES IN VIOLATION OF HEALTH & SAFETY CODE
§19955, ET. SEQ.**

(On Behalf of Plaintiffs PATRICK CONNALLY and DISABILITY RIGHTS
ENFORCEMENT, EDUCATION, SERVICES:HELPING YOU HELP OTHERS, a
California public benefit corporation, and Against Defendants HAROLD PARKER
PROPERTIES LP, a California limited partnership; JULIE D. RAY and ZIAD
ABUDIAB, individuals dba CAFE FRANCISCO, inclusive)
(Health & Safety code §19955, *et seq.*)

1. For injunctive relief, compelling defendants HAROLD PARKER PROPERTIES
LP, a California limited partnership; JULIE D. RAY and ZIAD ABUDIAB, individuals dba
CAFE FRANCISCO, inclusive, to make the CAFÉ FRANCISCO, located at 2161 Powell Street,
San Francisco, California, California, readily accessible to and usable by individuals with
disabilities, per state law.

2. For attorneys' fees pursuant to Code of Civil Procedure §1021.5, and/or,
alternatively, Health & Safety Code §19953, if plaintiffs are deemed the prevailing party;

3. For all costs of suit; and

4. For prejudgment interest pursuant to Civil Code §3291;

5. Such other and further relief as the court may deem just and proper.

**V. PRAYER FOR FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO
FULL AND EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES,
PRIVILEGES AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL
CODE §51, ET SEQ. (THE UNRUH CIVIL RIGHTS ACT)**

(On Behalf of Plaintiffs PATRICK CONNALLY and DISABILITY RIGHTS
ENFORCEMENT, EDUCATION, SERVICES:HELPING YOU HELP OTHERS, a
California public benefit corporation and Against Defendants HAROLD PARKER
PROPERTIES LP, a California limited partnership; JULIE D. RAY and ZIAD
ABUDIAB, individuals dba CAFE FRANCISCO, inclusive)
(California Civil Code §§51, 51.5, *et seq.*)

1. All statutory damages as afforded by Civil Code §52(a) for the date of incident and
for each occasion on which plaintiffs were deterred from returning to the subject public
accommodation;

2. Attorneys' fees pursuant to Civil Code §52(a), if plaintiffs are deemed the
prevailing party;

3. Treble damages pursuant to Civil Code §52(a);

4. For all costs of suit;

5. Prejudgment interest pursuant to Civil Code §3291; and

6. Such other and further relief as the court may deem just and proper.

VI. **PRAYER FOR FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO FULL AND EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES, PRIVILEGES AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL CODE §51, ET SEQ. (THE UNRUH CIVIL RIGHTS ACT)**

(On Behalf of Plaintiff PATRICK CONNALLY, and Against Defendants HAROLD PARKER PROPERTIES LP, a California limited partnership; JULIE D. RAY and ZIAD ABUDIAB, individuals dba CAFE FRANCISCO, inclusive)
(California Civil Code §§51, 51.5, et seq.)

1. General and compensatory damages to plaintiff PATRICK CONNALLY according to proof.

Dated: 10/8/08, 2008

THOMAS E. FRANKOVICH,
A PROFESSIONAL LAW CORPORATION

By: 

THOMAS E. FRANKOVICH
Attorneys for Plaintiffs PATRICK CONNALLY and
DISABILITY RIGHTS ENFORCEMENT, EDUCATION,
SERVICES: HELPING YOU HELP OTHERS, a California
public benefit corporation

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury for all claims for which a jury is permitted.

Dated: 10/8/08, 2008

THOMAS E. FRANKOVICH,
A PROFESSIONAL LAW CORPORATION

By: 

THOMAS E. FRANKOVICH
Attorneys for Plaintiffs PATRICK CONNALLY and
DISABILITY RIGHTS, ENFORCEMENT, EDUCATION,
SERVICES: HELPING YOU HELP OTHERS, a California
public benefit corporation

EXHIBIT A

Patrick Connally
164 N. San Pedro Road, Apt. C103
San Rafael, CA 94903

July 24, 2007

Manager
Café Francisco
2161 Powell St.
San Francisco, CA 94133

Dear Manager of Café Francisco:

Recently, I visited Café Francisco. It's a nice quiet out of the way place. I like sitting outside. As I use a wheelchair, I had problems with getting in. The step is the problem. People can help me in but that can be dangerous and someone could get hurt. It would seem you could ramp in from the sidewalk. That's pretty common in San Francisco.

I would really appreciate it if you would give me written assurance within the next two weeks that you will take care of these problems within the next three months. I'd like a written agreement. If you cannot do this would you forward my letter to whomever is in charge. I'd like to come back to Café Francisco once it's accessible to me. I may still come back before you do the work just because I like the place. Would you please reply to my letter by FedEx to make sure I get your response?

I found out who might be able to help you. If you need information on exactly what you need to do, you can contact Pacific ADA and IT Center in Oakland at 1-800-949-4232, or the federal government at 1-800-514-0301. Either of them can send you a copy of the ADA and ADAAG codes, specifications, diagrams and manuals so that you can do the work yourself or have someone do it for you. You could also get a list of barriers common to places like yours and do your own inspection for barriers and remove them.

I was told that, if you make less than a million dollars per year and have a few employees, that you can get a \$10,000 tax credit to make your place accessible. That's a great deal. You can get information on this from the two places I mentioned above. You should talk to your accountant about it. Maybe your accountant already has this information or knows about it.

Thank you for considering my request.

Thank You,

Patrick Connally

Patrick Connally
164 N. San Pedro Road, Apt. C103
San Rafael, CA 94903

July 24, 2007

Owner of Building
Café Francisco
2161 Powell St.
San Francisco, CA 94133

Dear Owner of Building for Café Francisco:

Recently, I visited Café Francisco. It's a nice quiet out of the way place. I like sitting outside. As I use a wheelchair, I had problems with getting in. The step is the problem. People can help me in but that can be dangerous and someone could get hurt. It would seem you could ramp in from the sidewalk. That's pretty common in San Francisco.

I would really appreciate it if you would give me written assurance within the next two weeks that you will take care of these problems within the next three months. I'd like a written agreement. If you cannot do this would you forward my letter to whomever is in charge. I'd like to come back to Café Francisco once it's accessible to me. I may still come back before you do the work just because I like the place. Would you please reply to my letter by FedEx to make sure I get your response?

I found out who might be able to help you. If you need information on exactly what you need to do, you can contact Pacific ADA and IT Center in Oakland at 1-800-949-4232, or the federal government at 1-800-514-0301. Either of them can send you a copy of the ADA and ADAAG codes, specifications, diagrams and manuals so that you can do the work yourself or have someone do it for you. You could also get a list of barriers common to places like yours and do your own inspection for barriers and remove them.

I was told that, if you make less than a million dollars per year and have a few employees, that you can get a \$10,000 tax credit to make your place accessible. That's a great deal. You can get information on this from the two places I mentioned above. You should talk to your accountant about it. Maybe your accountant already has this information or knows about it.

Thank you for considering my request.

Thank You,

Patrick Connally